13-677.

Attorney

Field

March 3d 1881

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 238.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

MAX JACOBY AND DAVID V. ZELLER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 8, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 238.

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INDEX.

	Original.	Print.
Writ of error	1	1
Clerk's certificate	2	1
Placita	3	2
Declaration	4	2
Plea	6	3
Bill of particulars	8	4
Postea	10	5
Bill of exceptions	12	5
Assignment of errors	31	10
Joinder in error	33	11
Citation	35	11

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Max Jacoby & David V. Zeller, plaintiffs, & Chester A. Arthur, defendant, a manifest error hath happened, to the great damage of the said Chester A. Arthur, as by his complaint appear', we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and seventy-eight, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 28 day of August, in the year of our Lord one thousand eight hundred and seventy-eight.

[SEAL.] JOHN I. DAVENPORT.

The foregoing writ is hereby allowed.

WM. G. CHOATE,
District Judge.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from three to thirty-six inclusive, contains a true and complete transcript of the record and proceedings had in said court in the case of Chester A. Arthur, plaintiff in error, against Max Jacoby and David V. Zeller, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twenty-fourth day of September, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the said United States the one hundred and third.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

i (Indorsed:) U. S. Supreme Court. 4721. Chester A. Arthur, plaintiff n error, against Max Jacoby & David V. Zeller, defendants in error. Writ of error.

Service of a copy of the within writ of error is hereby admitted.
New York, August 29th, 1878.

S. KAUFMANN,
Attorney for Defendants in Error.

U. S. circuit court.

Filed Aug. 29, 1878.

JOHN I. DAVENPORT, *Clerk.*

3 U. S. circuit court for the southern district of New York, in the second circuit.

Pleas before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, of the term of October, 1877, to wit, of the 31 day of October, in the year of our Lord one thousand eight hundred and seventy-seven.

Witness the honorable Alexander S. Johnson, one of the judges of the said circuit court.

JOHN I. DAVENPORT, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, on the day of , 187 , in term , before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings, in the city of New York, came Max Jacoby & David V. Zeller, by S. Kauffmann, their attorney, and brought into the said court, before the aforesaid judges thereof, then there, their certain declaration against Chester A. Arthur, collector, being in custody, &c., of a plea of trespass on the case upon promises; which said declaration follows in these words, that is to say:

4 The superior court of the city of New York.

MAX JACOBY AND DAVID V. ZELLER, PLAINTIFFS, *ag'st* CHESTER A. ARTHUR, COLLECTOR OF THE port of New York, defendant.

The plaintiffs above named, by Sigismund Kaufmann, their attorney, complain of the defendant and allege:

That at the times hereinafter mentioned they were, and still are, copartners doing business in the city of New York, under the firm name and style of Max Jacoby and Zeller.

That the said defendant, on the 16th day of February, 1876, at the city of New York, was indebted to the said plaintiffs in the sum of six hundred and seventeen $\frac{70}{100}$ dollars gold coin of the United States of America for money before that time lent and advanced by said plaintiffs to the said defendant, and at the special instance and request of said defendant; and for other moneys by said plaintiffs before that time paid, laid out, and expended for the said defendant, and at the
5 request of said defendant; and for other moneys by said defendant before that time had and received to and for the use of the said plaintiffs. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised he said plaintiffs well and truly to pay unto the plaintiffs the said sum

of money in this count mentioned when the defendant should be thereunto afterwards requested.

And whereas also the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, accounted, together with the said plaintiffs, of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiffs, and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and indebted to the plaintiffs in the further sum of six hundred and seventeen $\frac{70}{100}$ dollars gold coin of the United States of America, of lawful money as aforesaid; and being so found in arrear and indebted to the said plaintiffs, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well
6 and truly to pay unto the said plaintiffs the said sum of money last mentioned when the said defendant should be hereunto afterwards requested. Nevertheless the said defendant (although often requested, &c.) has not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs, but to pay the same, or any part thereof, has hitherto wholly refused, and still does refuse, to the damage of the said plaintiffs of six hundred and seventeen $\frac{70}{100}$ dollars gold coin.

Wherefore plaintiffs pray judgment against the defendant for the sum of six hundred and seventeen $\frac{70}{100}$ dollars, in gold coin, with interest and costs.

SIGISMUND KAUFMANN,
Plaintiffs' Attorney.

Plea.

United States circuit court, southern district of New York.

CHESTER A. ARTHUR
ads.
MAX JACOBY & AL.

And the said defendant, Chester A. Arthur, by George Bliss, his attorney, comes and defends the wrong and injury, when, &c., and
7 says that he did not undertake and promise in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendant, and of this he puts himself upon the country, and the said plaintiffs do the like, &c.

GEORGE BLISS,
Defendant's Attorney.

To SIGISMUND KAUFMANN,
Plaintiffs' Attorney.

(Endorsed:) ※ 4721. U. S. circuit court. Max Jacoby & ano. ag'st Chester A. Arthur. Copy. Pleadings. S. Kaufmann, pl'ffs' att'y, 39 Nassau st., N. Y. City.

8 *Import entries and particulars concerning goods on which duty has been paid "under protest" by Max Jacoby & Zeller, New York.*

Date of entry.	Name of vessel.	Marks & numbers of cases.	Port of entry.	Place of export.	Date of invoice.
August 14, '75....	Bremen steamer Neckar.	5 cases ..... J & A J 3923–7.	New York.	Berlin	July 22, 75
September 4, 75..	Bremen steamer Main..	3 cases..... ..... M. J. & Z. 772–4.	New York.	Berlin	Aug'st 18,' 75
November 1, '75..	Bremen steamer Oder...	3 cases..... J & A J 5373–5.	New York.	Berlin	Octob'r 6, '75
November 29, '75.	Bremen steamer Herman.	5 cases..... J & A J 5808–12.	New York.	Berlin	Nov'b'r 5, '75

Date of entry.	Name of vessel.	Date of payment of duty.	Description of merchandise.	Total amount of invoice.
August 14, '75....	Bremen steamer Neckar.	Aug. 14. '75..	Paintings on porcelain produced by hand. Works of art.	MS. 18,218. 60
September 4, '75..	Bremen steamer Main..	Sept'r 4, '75.	Paintings on porcelain produced by hand. Works of art.	MS. 7, 476. 27
November 1, '75..	Bremen steamer Oder..	Nov'b'r 1, '75	Paintings on porcelain produced by hand. Works of art	MS. 13, 188. 75
November 29, '75.	Bremen steamer Herman.	Nov'b'r 29, '75	Paintings on porcelain produced by hand. Works of art.	MS. 9, 028. 35

Date of entry.	Name of vessel.	Name of shipper.	Date of protest and appeal.	Amount of duty paid in excess.
August 14, '75....	Bremen steamer Neckar.	Julius & Adolph Jacoby, Berlin.	Sept'r 27, '75..	$39
September 4, '75..	Bremen steamer Main..	F. Sala & Co., Berlin.....	Sept'r 4, '75...	18 40
November 1, '75..	Bremen steamer Oder..	Julius & Adolph Jacoby, Berlin.	Dec'b'r 14, '75.	127 30
November 29, '75.	Bremen steamer Herman.	Julius & Adolph Jacoby, Berlin.	Dec'b 7, '75...	440

Gold, $617 70

Names of importers in all cases Mess. Jacoby & Zeller. Letters from Secretary of Treasury dated December 27, '75; January 21st, '76; & February 26, '76.

S. KAUFMANN,
Pff's Att'y.

9 CITY & COUNTY OF NEW YORK, *ss:*

Benno Lewinson, of the city of New York, being duly sworn, says that he is 21 years of age, and that on the 3d of March, 1876, he served a copy of the within bill on Geo. Bliss, U. S. district attorney, at the new post-office building, in New York City, by leaving the same with, after delivering it to, a person in charge of his office, said Bliss being absent at the time.

BENNO LEWINSON.

Sworn to before me this 3rd day of March, 1876.

CHARLES K. LEXAN,
Notary Public, Rockland Co., N. Y.

(Endorsed:) N. Y. superior court. Max Jacoby & ano. ag'st Chester A. Arthur, collector. Bill of particulars. No. 1. S. Kaufmann, pl'ffs' att'y, 39 Nassau st., N. Y. City.

10 Circuit court of the United States for the southern district of New York.

MAX JACOBY AND DAVID V. ZELLER, PL'FFS,
ag'st
CHESTER A. ARTHUR, COLLECTOR, &C.

The issues in this action having been brought on for trial before Mr. Justice Shipman and a jury at a circuit court held for October term of 1877, and the issues having been tried and a verdict for the plaintiffs having been duly rendered by the jury for the sum of six hundred and seventeen $\frac{40}{100}$ dollars gold and eighty-four $\frac{49}{100}$ dollars currency, interest on said sum to November 2d, 1877, and the costs having been duly adjusted at forty-eight dollars and thirty-five cents:

Now, on motion of Sigismund Kaufmann, esq., attorney for plaintiffs, it is hereby adjudged that the plaintiffs, Max Jacoby and David V. Zeller, recover of the defendant, Chester A. Arthur, collector of the port of New York, the sums of six hundred and seventeen $\frac{40}{100}$ dollars gold coin, and eighty-four $\frac{49}{100}$ dollars currency, the damages fixed by
11 the court of judgment, and with eighty-eight and $\frac{16}{100}$ dollars currency, interest on said verdict, and costs amounting altogether to the sum of six hundred and seventeen $\frac{40}{100}$ dollars gold coin, and one hundred seventy-two & $\frac{65}{100}$ dollars currency.

Judgment signed this 24 day of August, A. D. 1878.

J. M. DEUEL,
Dep. Clerk.

84. 49
88. 16

172. 65

(Endorsed:) U. S. circuit court. Max Jacoby & ano. vs. Chester A. Arthur, collector, &c. Judgment. S. Kaufmann, pl'ffs' att'y, 39 Nassau st., N. Y. City. U. S. circuit court. Filed Aug. 24, 1878. John I. Davenport, clerk.

12 *Bill of exceptions.*

United States circuit court, southern district of New York.

MAX JACOBY ET AL., PLAINTIFFS,
vs.
CHESTER A. ARTHUR, DEFENDANT.

Afterwards, to wit, on the thirty-first day of October, 1877, at a stated term of this court, begun and holden at the city of New York, to wit, on the third Monday of October, 1877, before honorable Nathaniel Shipman, district judge of the United States for the district of Connecticut, appointed to hold the said circuit according to the form of the statute in such case made and provided, the aforesaid issues so joined as between the said parties as by the record more fully appears,
13 came on to be tried by a jury duly empannelled and sworn for

that purpose, the said trial continuing on the 31st day of October and 1st and 2nd day of November, 1877; the said plaintiffs being represented by Lewis Sanders, esq., and G. N. Sanders, esq., and the defendant being represented by H. E. Tremain, esq.

This action was brought to recover 40 per cent. alleged excess of duties levied on certain paintings on porcelain, imported by plaintiffs.

On the trial plaintiffs proved the items correctly set forth in the following bill of particulars:

Date of entry.	Name of vessel.	Marks and numbers of cases.	Port of entry.	Place of export.	Date of invoice.
August 14, '75...	Bremen steamer Neckar.	5 cases ..... J & A J 3923-7.	New York.	Berlin	July 22, '75
September 4, '75..	Bremen steamer Main ..	3 cases..... M. J. & L. 772-74.	New York.	Berlin	Aug. 18, '75
November 1, '75..	Bremen steamer Oder...	3 cases..... J & A J 5373-5.	New York	Berlin	October 6, '75
14 November 29, '75.	Bremen steamer Hermann.	5 cases..... J & A J 5808-12.	New York	Berlin	Nov'er 5, '75

Date of entry.	Name of vessel.	Date of payment of duty.	Description of merchandise.	Total amount of invoice.
August 14, '75....	Bremen steamer Neckar.	Aug. 14, '75..	Paintings on porcelain produced by hand. Works of art.	MS. 18,218. 60
September 4, '75.	Bremen steamer Main ..	Sept. 4, '75..	Paintings on porcelain produced by hand. Works of art.	MS. 7,476. 27
November 1, '75..	Bremen steamer Oder ..	Nov'er 1, '75	Paintings on porcelain produced by hand. Works of art.	MS. 13,188. 75
November 29, '75.	Bremen steamer Hermann.	Nov'er 29, '75	Paintings on porcelain produced by hand. Works of art.	MS. 9,028. 35

Date of entry.	Name of vessel.	Name of shipper.	Date of protest.	Amount of duty paid in excess.
August 14, '75....	Bremen steamer Neckar	Julius & Adolph Jacoby, Berlin.	Sept. 27, '75...	$32
September 4, '75..	Bremen steamer Main..	F. Sala & Co., Berlin.....	Sept. 4, '75....	16 40
November 1, '75..	Bremen steamer Oder...	Julius & Adolph Jacoby, Berlin.	Dec'er 14, '75..	127 30
November 29, '75.	Bremen steamer Hermann.	Julius & Adolph Jacoby, Berlin.	Dec'er 7, '75 ..	440

Names of importers in all cases Mess. Max Jacoby & Zeller. Letters from Secretary of Treasury, dated December 27, '75; January 21, '75; & February 26, '76.

S. KAUFMANN,
Pffs' Att'y.

Said alleged excessive duties were all paid under due protest, unless as to the particular protests hereinafter specified, and appeal was duly taken from the decisions of the collector to the Secretary of the Treasury, who affirmed the same, whereupon this suit was duly brought within ninety days, all pursuant to statute.

The importations were as follows: The first lot by the steamship Neckar, August 14th, 1875, invoiced as garniture, on which the
15 excess of duty claimed was $32; and the second lot by the steamship Main, excess $18.40, on which two lots protest was made in form and season, September 27th and 4th, 1875, respectively; the third lot by steamship Oder, Nov. 1st, 1875, excess, $127.30, and the fourth lot by steamship Hermann, December 7th, 1875, $440, on which last two lots protest was made at the proper time, December 14th and 7th, 1875, respectively, which protests were substantially in the following form mutatis mutandis:

NEW YORK, *Dec. 14th*, 1875.

To the Hon. CHESTER A. ARTHUR,
Collector of the Port New York:

D'R SIR: We do hereby protest against the payment of 50 % charged on certain porcelain paintings, contained in a shipment of 3 cases,

marked

5373–5, imported by us on steamship Oder, from
16 Bremen, contained in "consumption" entry of November 1st, '75, claiming that according to act of Congress, sect. 19, act of 22d of March 13, 1861, said goods are only liable to a duty of 10 %, because they are paintings produced by hand by renowned artists, and are sold to the finest trade in or without frames. They are works of art, and as such are subject only to a duty of 10 %.

We pay the amount exacted in order to get possession of the goods, but claim to have the difference of $127.30 or thereabouts refunded.

Respectfully,

MAX JACOBY & ZELLER.

The above protest as to importation by steamship Oder was duly objected to by counsel for defendant on the ground that it could not be the basis of any recovery; that it refers to laws repealed at the
17 time of transactions in question, and the reception of any invoice or evidence relating thereto likewise objected to, which objection was overruled and counsel for defendant duly excepted; the other protests were admitted without objection.

Said alleged excessive duties were levied on said paintings on porcelain as decorated China or porcelain ware, paying 50 per cent. duty ad valorem as paintings not otherwise provided for, the alleged excess being 40 per cent. as aforesaid.

The following named exhibits are samples of said imported goods put in evidence by plaintiffs, to wit: A, B, & C to Q, of which A, B, G, H, and N were assessed at 10 % and the rest at 50 % under protest; L to Q in frames, frames admitted subject to objection and exception,
18 and the following named further samples by defendant, 1 A, 2 A, and 3 A.

It was proved that the above-named exhibits, exclusive of the frames which were not imported with them, were fair samples of the said paintings on porcelain imported, and that all said goods were pictures painted by hand and their value depended on the skill of the particular artist who painted them, and the porcelain ground on which they were painted was only used to obtain a good surface on which to paint, and was entirely obscured from view when framed or set in any manner, and formed no material part of the value of said paintings on porcelain and did not in itself constitute an article of chinaware, being man-

that purpose, the said trial continuing on the 31st day of October and 1st and 2nd day of November, 1877; the said plaintiffs being represented by Lewis Sanders, esq., and G. N. Sanders, esq., and the defendant being represented by H. E. Tremain, esq.

This action was brought to recover 40 per cent. alleged excess of duties levied on certain paintings on porcelain, imported by plaintiffs.

On the trial plaintiffs proved the items correctly set forth in the following bill of particulars:

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November 1, '75..	Bremen steamer Oder...	3 cases..... J & A J 5373-5.	New York	Berlin	October 6, '75
14 November 29, '75.	Bremen steamer Hermann.	5 cases..... J & A J 5808-12.	New York	Berlin	Nov'er 5, '75

Date of entry.	Name of vessel.	Date of payment of duty.	Description of merchandise.	Total amount of invoice.
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Date of entry.	Name of vessel.	Name of shipper.	Date of protest.	Amount of duty paid in excess.
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September 4, '75..	Bremen steamer Main..	F. Sala & Co., Berlin.....	Sept. 4, '75....	18 40
November 1, '75..	Bremen steamer Oder...	Julius & Adolph Jacoby, Berlin.	Dec'er 14, '75..	127 30
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Names of importers in all cases Mess. Max Jacoby & Zeller. Letters from Secretary of Treasury, dated December 27, '75; January 21, '75; & February 26, '76.

S. KAUFMANN,
Pffs' Att'y.

Said alleged excessive duties were all paid under due protest, unless as to the particular protests hereinafter specified, and appeal was duly taken from the decisions of the collector to the Secretary of the Treasury, who affirmed the same, whereupon this suit was duly brought within ninety days, all pursuant to statute.

The importations were as follows: The first lot by the steamship Neckar, August 14th, 1875, invoiced as garniture, on which the
15 excess of duty claimed was $32; and the second lot by the steamship Main, excess $18.40, on which two lots protest was made in form and season, September 27th and 4th, 1875, respectively; the third lot by steamship Oder, Nov. 1st, 1875, excess, $127.30, and the fourth lot by steamship Hermann, December 7th, 1875, $440, on which last two lots protest was made at the proper time, December 14th and 7th, 1875, respectively, which protests were substantially in the following form mutatis mutandis:

NEW YORK, *Dec. 14th*, 1875.

To the Hon. CHESTER A. ARTHUR,
Collector of the Port New York:

D'R SIR: We do hereby protest against the payment of 50 % charged on certain porcelain paintings, contained in a shipment of 3 cases,

marked

5373–5, imported by us on steamship Oder, from
16 Bremen, contained in "consumption" entry of November 1st, '75, claiming that according to act of Congress, sect. 19, act of 22d of March 13, 1861, said goods are only liable to a duty of 10 %, because they are paintings produced by hand by renowned artists, and are sold to the finest trade in or without frames. They are works of art, and as such are subject only to a duty of 10 %.

We pay the amount exacted in order to get possession of the goods, but claim to have the difference of $127.30 or thereabouts refunded.

Respectfully,

MAX JACOBY & ZELLER.

The above protest as to importation by steamship Oder was duly objected to by counsel for defendant on the ground that it could not be the basis of any recovery; that it refers to laws repealed at the
17 time of transactions in question, and the reception of any invoice or evidence relating thereto likewise objected to, which objection was overruled and counsel for defendant duly excepted; the other protests were admitted without objection.

Said alleged excessive duties were levied on said paintings on porcelain as decorated China or porcelain ware, paying 50 per cent. duty ad valorem as paintings not otherwise provided for, the alleged excess being 40 per cent. as aforesaid.

The following named exhibits are samples of said imported goods put in evidence by plaintiffs, to wit: A, B, & C to Q, of which A, B, G, H, and N were assessed at 10 % and the rest at 50 % under protest; L to Q in frames, frames admitted subject to objection and exception,
18 and the following named further samples by defendant, 1 A, 2 A, and 3 A.

It was proved that the above-named exhibits, exclusive of the frames which were not imported with them, were fair samples of the said paintings on porcelain imported, and that all said goods were pictures painted by hand and their value depended on the skill of the particular artist who painted them, and the porcelain ground on which they were painted was only used to obtain a good surface on which to paint, and was entirely obscured from view when framed or set in any manner, and formed no material part of the value of said paintings on porcelain and did not in itself constitute an article of chinaware, being man-

19 ufactured simply as a ground for the paintings, and not for any use independent of the paintings.

It was also proved that the pictures were painted on the porcelain grounds or surfaces with metallic colors, and were subsequently baked for several hours to make the colors firm, and there was evidence tending to show that they were likewise glazed for the same purpose which takes the place of varnishing oil paintings. It was proved that plaintiffs dealt principally in paintings, chromos, lithorgraphs, engravings, &c., and that similar pictures were painted on canvass and were sometimes sold by the dozen; and, subject to objection and exception below, that the said paintings on porcelain were sometimes framed like part
20 of the exhibits and sometimes without frames; also that the smallest sizes, defendant's Exhibits 1 A, 2 A, & 3 A, comprising two items, on which two together the alleged excess of duty is $32, were invoiced as "garniture," and were sometimes set in jewelry, furniture, and mantel pieces, but were likewise framed after arrival in this country, as shown in the Exhibits L, M, and N.

The other sizes were in many instances invoiced by the dozen, according to custom; when the said frames were offered in evidence, defendant's counsel duly objected to any frames being exhibited or put in evidence, as the goods were not imported in frames; objection overruled, and exception.

Plaintiffs' witness testified that frames were made in this country to fit the paintings; also that frames had long been in use; which
21 testimony was duly objected to as irrelevant and immaterial; objection overruled, and exception.

Plaintiffs offered in evidence exhibits, which were samples of similar paintings on porcelain, which had been assessed at 10% as paintings not otherwise provided for.

Exhibits objected to, and received under objection and exception.

Plaintiffs proved the interest on principal sums to be as follows, $84 47-100.

The plaintiff having rested, defendant moved that the court direct a verdict for the defendant; which motion was denied, and defendant's counsel duly excepted.

Defendant called Davis Collamore, an importer and wholesale and retail dealer in porcelain and chinaware, of forty years' experience,
22 who testified that such ware was frequently so highly ornamented that the ornamentation constituted nine-tenths of the value, and put in evidence Exhibits H and 5, called placques; the smaller one was in shape a plate, had a fine picture painted on it, and was used to hang on the wall as an ornament, worth about $25; the larger one about $50. Larger one was earthenware and not china. The English call the smaller one a tray; it was porcelain. "Porcelain" and "china" are synonymous terms.

Theodore Haviland, manufacturer of china at Limoges, France, testified that he was familiar with the manufacture, and manufactured porcelain and painted pictures on porcelain, same as plaintiffs' samples. That there are three ways to place pictures on porcelain. One
23 is to transfer the picture, and fill it in on colors; the other to transfer by chromos; and the third to draw as on canvass, and fill in as you would on canvass. The colors in the articles in question here are entirely different from those on canvass. They are all oxides of metals. No oil colors would stand fire. Metals are used for porcelain. After the oxide is put on, the article is fired, the colors become bright, and are then enameled. The process is this: The porcelain is

put in slides, and then into a large furnace, and baked for several hours after the picture is put on. The object is to fasten color, and put glaze upon it. I should judge that these samples—indicating plaintiffs'—were subjected to that process, and that all porcelain is.

24 They are put on the same way on china, with vitrified glass. China comes from England and porcelain from France. Sometimes a printed copy is worth more than that done by hand. It depends upon the artist.

Defendant introduced no other testimony.

The foregoing comprises substantially all of the evidence in the case.

The evidence then being closed, counsel for defendant moved that the court direct a verdict for the defendant upon the ground that the plaintiffs had not made out a case of illegal exaction of duty; and that no sufficient evidence had been adduced tending to show an illegal exaction of duty by the collector upon which the plaintiffs were entitled to go to the jury, and that plaintiffs had not made

25 out a prima facie case.

The court held otherwise, and denied said motion of defendant; and counsel for defendant then and there duly excepted to said ruling.

The defendant's counsel then claimed that all the testimony in the case should be submitted to the jury.

This the court refused to do; and defendant's counsel duly excepted to said ruling.

Counsel for defendant then claimed the right to go to the jury upon certain specific points, which he indicated in requesting the court to submit the evidence in the case to the jury, and to charge them as follows:

"If the jury find that the articles in controversy were in fact

26 comprehended within the descriptive phrase, 'china, porcelain, and parianware, gilded, ornamented or decorated in any manner,' then they were dutiable at fifty per centum ad valorem, and defendant is entitled to a verdict."

The court refused said claim, and to give such instructions, and defendant's counsel duly excepted.

Counsel for the defendant then requested the court to instruct the jury that the articles in controversy did not come within the tariff description of "paintings not otherwise provided for," at ten per centum duty, unless the jury should come to the conclusion, upon all the evidence, that the plaintiffs' importations in question were not articles of china or porcelain, gilded, ornamented, or decorated in any manner.

27 The court refused so to instruct the jury, and defendant's counsel duly excepted.

Counsel for defendant then requested the court to charge the jury that pictures on porcelain, manufactured as the testimony tended to show that plaintiffs' articles were manufactured, were not the articles intended to be included within the description "paintings not otherwise provided for," if words could be found elsewhere in the tariff apt to describe the plaintiffs' articles in question.

The court refused so to instruct the jury, and defendant's counsel duly excepted.

Counsel for plaintiffs then moved the court to direct a verdict for the plaintiffs, on the ground that the question at issue was simply one of law.

28 The court then, pursuant to such motion, there being no disputed question of fact in the case, directed the jury to render a verdict for the plaintiffs for the principal sum of $617.70 in gold, and

$84.47 interest in currency; to which direction counsel for defendant then and there excepted.

The jury then, in accordance with said direction, rendered a verdict for the plaintiffs for said sum.

The court then, on motion of defendant's counsel, directed the entry on its minutes of the usual certificate that said exaction was made under the direction of the Secretary of the Treasury.

And inasmuch as the foregoing several matters of fact and of law, and the said several exceptions so offered and made to the said
29 opinions, instructions, and decisions of the court do not appear upon the record of the trial, therefore, on the prayer of said defendant, by his counsel, the said judge has signed the foregoing as and for the bill of exceptions in this cause, as of the second day of November, 1877, the day said verdict was rendered, and at the October term, 1877, of said court.

[L. S.] N. SHIPMAN, *Judge.*

30 (Indorsed:) U. S. circuit court, southern district of New York. 4721. Max Jacoby et al. versus Chester A. Arthur. Bill of exceptions. Stewart L. Woodford, United States attorney for the southern district of New York.

Due service of a copy of the within and of the notice above admitted this day of , 187 .

Attorney.

U. S. circuit court.

Filed May 8, 1878.

JOHN I. DAVENPORT, *Clerk.*

31 Supreme Court of the United States.

CHESTER A. ARTHUR, PLAINTIFF IN ERROR,
vs.
MAX JACOBY & DAVID V. ZELLER, DEFENDant' in error.

Afterwards, to wit, on the second Monday of October, in the same term, before the justices of the said court, at the Capitol in Washington, comes the said plaintiff in error by Stewart L. Woodford, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given was given for the said defendant' in error against the said plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendant.

And the said plaintiff prays that the judgment aforesaid for the error aforesaid and other errors in the record and proceedings aforesaid may be reversed, annuled, and altogether held for nothing; that he, the said plaintiff in error, may be restored to all things which he has lost by occasion of said judgment, &c., &c., &c.

STEWART L. WOODFORD,
Attorney for Plaintiff in Error.

32 (Endorsed:) 4721. Chester A. Arthur, plaintiff in error, vs. Max Jacoby & David V. Zeller, defendant in error. Assignment in error. Stewart L. Woodford, att'y for pl'ff in error.

Service of a copy of the within assignment in error is hereby admitted.
New York, June 10, 1878.

S. KAUFMAN,
Att'y for Def't in Error.

U. S. circuit court.

Filed June 10, 1878.

JOHN I. DAVENPORT, *Clerk.*

33 *Joinder in error.*

Supreme Court of the United States.

CHESTER A. ARTHUR, PLAINTIFF IN ERROR,
vs.
MAX JACOBY & DAVID V. ZELLER, DEFENDants in error.

And afterwards, to wit, on the third Monday of October, 1878, the said Max Jacoby and David V. Zeller, defendants in error, by Sigismund Kaufmann, their attorney, come here into court and say that there is no error, either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid. And they pray that the said Supreme Court, before the justices thereof, now here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error, and that the judgment aforesaid in form aforesaid given may be in all things affirmed, &c.

SIGISMUND KAUFMANN,
Attorney for Defendant' in Error.

34 (Indorsed:) Supreme Court of the United States. Chester A. Arthur, pl'ff in error, vs. Max Jacoby and David V. Zeller, joinder in error. S. Kaufmann, att'y for def'ts in error, 39 Nassau st., N. Y. City.

Due service of a copy of the within joinder, &c., is hereby admitted. Dated New York, Sept., '78.

STEWART L. WOODFORD.
U. S. Att'y, Att'y for Def't P.

U. S. circuit court.

Filed Sept. 14, 1878.

JOHN I. DAVENPORT, *Clerk.*

35 UNITED STATES OF AMERICA, *ss:*

To Max Jacoby & David V. Zeller, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, eighteen hundred and seventy-eight, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Chester A. Arthur is plaintiff in error, and you are defendants in error, to show

cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated Aug. 28, 1878.

WM. G. CHOATE,
District Judge.

36 (Indorsed:) U. S. Supreme Court. 4721. Chester A. Arthur, plaintiff in error, against Max Jacoby & David V. Zeller, defendants in error. Citation.

Service of a copy of the within citation is hereby admitted.
New York, August 29th, 1878.

S. KAUFMANN,
Attorney for Defendants in Error.

U. S. circuit court.

Filed Aug. 29, 1878.

JOHN I. DAVENPORT, *Clerk.*

(Indorsement on cover:) No 238. Chester A. Arthur, collector of the port of New York, plaintiff in error, vs. Max Jacoby & David V. Zeller. S. New York C. C. U. S.
Filed 8th October, 1878.

In the Supreme Court of the United States.

OCTOBER TERM, 1880.

ARTHUR
v.
JACOBY. } No. 238.

Plaintiff's ~~DEFENDANT'S~~ BRIEF.

FACTS.

Action to recover forty per cent. alleged excess of duty upon paintings on porcelain imported into New York by the defendants in 1875.

The goods were assessed as decorated china or porcelain ware at fifty per cent., under Revised Statutes, sec. 2504, Schedule B, while they were claimed to be dutiable as paintings at ten per cent., under Schedule M of that section, page 478, bottom.

The first importation was invoiced as "garniture."

Many of these articles were invoiced by the dozen to the plaintiffs below, who imported them all without frames.

ASSIGNMENT OF ERROR.

1. The court erred in refusing this instruction, asked by the collector:

"If the jury find that the articles in controversy were, in fact, comprehended in the descriptive phrase 'china, porcelain and parian ware, gilded, ornamented, or decorated in any manner,' then they were dutiable at fifty

per centum ad valorem, and defendant is entitled to a verdict." (Record, 9, middle.)

2. In refusing to instruct, as requested, "that the articles in controversy did not come within the tariff description of 'paintings not otherwise provided for,' at ten per centum duty, unless the jury should come to the conclusion, upon all the evidence, that the plaintiff's importations in question were not articles of china or porcelain, gilded, ornamented, or decorated in any manner." (Record, 9, folio 26.)

3. The refusal to instruct "that pictures on porcelain, manufactured as the testimony tended to show that plaintiff's articles were manufactured, were not the articles included within the description '*not* otherwise provided for,' if words could be found elsewhere in the tariff apt to describe the plaintiff's articles in question." (*Id.*, fol. 27.)

BRIEF.

The *intention* of the law-makers is the law. (U. S. *v.* Freeman, 3 How., 565; U. S. *v.* Babbitt, 1 Black, 61, and 95 U. S., 336, middle, and reports and authorities, *passim*.) Now, in legislating to admit paintings at ten per cent., I believe there can be no real question in any mind that Congress had in view the products of an artist's studio, and not of a factory from which these importations are bought at so much a dozen. They are doubtless pretty ornaments—"garniture," as the first invoice called them (that they were paintings was an afterthought)—but they are not what is comprehended within the ordinary sense of the word "paintings" as it is used in the tariff.

The colors used are neither oil nor water-colors, but metallic oxides, which are then baked on like pies in an oven.

EDWIN B. SMITH,
Assistant Attorney-General.

OFFICE SUPREME COURT U.S.
FILED
FEB 12 1881
JAMES H. McKENNEY, Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1880.

ARTHUR
v.
JACOBY. } No. 238.

PLAINTIFF'S SECOND BRIEF.

In the Supreme Court of the United States.

OCTOBER TERM, 1880.

ARTHUR
v.
JACOBY. } No. 238.

PLAINTIFF'S SECOND BRIEF.

FACTS.

Action to recover forty per cent. alleged excess of duty upon paintings on porcelain imported into New York by the defendants in 1875.

The goods were assessed as decorated china or porcelain ware at fifty per cent., under Revised Statutes, section 2504, Schedule B, while they were claimed to be dutiable as paintings at ten per cent., under Schedule M of that section, page 478, bottom.

Whether they were paintings or not involved (as the collector contended) an issue of fact, upon which he claimed to go to the jury, but the presiding judge directed a verdict for the importers (Record, 9, bottom), to which the district attorney excepted (*Id.*, 10, top).

Certain samples of the goods imported were intro-

duced as exhibits. It was proved that the above-named exhibits, exclusive of the frames, *which were not imported with them*, were fair samples of the paintings on porcelain imported, and that all said goods were pictures painted by hand, and their value depended on the value of the particular artist employed, and the porcelain ground on which they were painted was only used to obtain a good surface on which to paint, and was entirely obscured from view when framed or set in any manner, and formed no material part of the value of said paintings on porcelain, and did not itself constitute an article of chinaware, being manufactured simply as a ground for the paintings, and not for any use independent of the paintings.

It was also proved that the pictures were painted on the porcelain grounds or surfaces with metallic colors, and were subsequently baked for several hours to make the colors firm, and there was evidence tending to show that they were likewise glazed for the same purpose which takes the place of varnishing oil-paintings. It was proved that plaintiffs dealt principally in paintings, chromos, lithographs, engravings, &c., and that similar pictures were painted on canvas and were sometimes sold by the dozen; and, subject to objection and exception below, that the said paintings on porcelain were sometimes framed like part of the exhibits and sometimes without frames; also, that the smallest sizes were sometimes set in jewelry, furniture, and mantel-pieces, but were likewise framed after arrival in this country, as shown in the Exhibits L, M, and N.

The other sizes were in many instances invoiced by the dozen, according to custom. When the said frames were offered in evidence defendant's counsel duly ob-

jected to any frames being exhibited or put in evidence, as the goods were not imported in frames. Objection overruled, and exception.

Plaintiffs offered in evidence exhibits, which were samples of similar paintings on porcelain, which had been assessed at 10 per cent. as paintings not otherwise provided for.

Exhibits objected to and received under objection and exception.

Defendant called Davis Collamore, an importer and wholesale and retail dealer in porcelain and chinaware, of forty years' experience, who testified that such ware was frequently so highly ornamented that the ornamentation constituted nine-tenths of the value, and put in evidence Exhibits H and 5, called placques. The smaller one was in shape of a plate, had a fine picture painted on it, and was used to hang on the wall as an ornament, worth about $25; the larger one, about $50. Larger one was earthenware and not china. The English call the smaller one a tray; it was porcelain. "Porcelain" and "china" are synonymous terms.

Theodore Haviland, manufacturer of china at Limoges, France, testified that he was familiar with the manufacture, and manufactured porcelain and painted pictures on porcelain same as plaintiff's samples; that there are three ways to place pictures on porcelain. One is to transfer the picture and fill it in on colors; the other to transfer by chromos; and the third to draw as on canvas, and fill in as you would on canvass. The colors in the articles in question here are entirely different from those on canvass. They are all oxides of metals. No oil colors would stand fire. Metals are used for porcelain. After the oxide is put on, the article is fired,

the colors become bright, and are then enameled. The process is this: The porcelain is put in slides, and then into a large furnace, and baked for several hours after the picture is put on. The object is to fasten color, and put glaze upon it. I should judge that these samples—indicating plaintiffs'—were subjected to that process, and that all porcelain is. They are put on the same way on china, with vitrified glass. China comes from England and porcelain from France. Sometimes a printed copy is worth more than that done by hand. It depends upon the artist.

Defendant introduced no other testimony.

The foregoing comprises substantially all of the evidence in the case.

The defendant's counsel then claimed that all the testimony in the case should be submitted to the jury.

This the court refused to do; and defendant's counsel duly excepted to said ruling. (Record, 5 to 9.)

ASSIGNMENT OF ERRORS.

1. The court erred in admitting "samples of similar paintings on porcelain, which had been assessed at ten per cent., as paintings not otherwise provided for." (Record, 8, middle.)

2. In denying the collector's claim to have all the testimony in the case submitted to the jury. (Id., 9, folio 25.)

BRIEF.

I.

That this or some other collector had assessed "similar" importations at ten per cent., was no evidence tending to prove whether or not these articles, concerned in the present suit, were dutiable as paintings, or as decorated china or porcelain.

The admission of these samples, and the testimony as to the duty levied upon them, did tend to prejudice the collector's case.

If it were assumed that those "similar" goods were correctly assessed, it begged the whole question in dispute; if they were not, then their exhibition could only confuse the jury.

II.

There being some testimony, given by the most prominent dealers in porcelain and china ware in New York, showing that this highly decorated ware still sold as ware, the cause should have been submitted to the jury for a finding as to what the goods in question were.

EDWIN B. SMITH,
Assistant Attorney-General.

OFFICE SUPREME COURT U. S.
FILED
JAN 25 1881
JAMES H. McKENNEY, Clerk

SUPREME COURT OF THE UNITED STATES.

CHESTER A. ARTHUR, Collector of the Port of New York,

Plaintiff in Error,

vs.

MAX JACOBY and DAVID V. ZELLER,

Defendants in Error.

In Error to the Circuit Court of the United States, for the Southern District of New York.

Statement and Brief of Argument on behalf of the Defendants in Error upon the merits.

LEWIS SANDERS,
GEORGE N. SANDERS,
Of Counsel for Defendants in Error.

BURGOYNE, Law Printer (Law Telephone No. 590), 29 Rose St., N. Y.

SUPREME COURT OF THE UNITED STATES.

CHESTER A. ARTHUR, Collector of the Port of New York,
Plaintiff in Error,

vs.

MAX JACOBY and another,
Defendants in Error.

Points of Defendant in Error.

Abstract of Case.

The defendants in error were art dealers in New York City. They imported from Berlin, Germany, certain paintings on porcelain on which there was a duty of ten per centum *ad valorem*. The plaintiff in error assessed a duty of 50% *ad valorem* on these paintings under pretense that the painting was to decorate the porcelain surface, which it entirely concealed; that the painting was durable, and, therefore, would wear, concluding that a painting upon a porcelain surface was decorated porcelain-ware, and, as such, liable to a duty of 50% (p. 6).

Against this excessive assessment of duty the defendants in error duly protested and appealed (p. 6).

Only one of the protests is in any way criticised—that by the steamer "Oder," of November 1st, 1875 (p. 7), and this only upon the ground that while it specifies the correct amount of duty which should have been assessed, and the grounds thereof, it is claimed that it refers to an Act of Congress that had been repealed. The act referred to is that of March 22d, 1861. A reference to page 478 of the Revised Statutes (2d Ed.) shows that the terms of the Act of 1861 are incorporated and continued in force there in precisely the same words.

"Paintings and statuary not otherwise provided for, ten per "centum *ad valorem*."

So far from the act being repealed, it was continued in full force.

Besides, the earlier protests are admitted to have been in due form, and there is no question that in fact this protest did "apprise the Collector of the nature of the objection to the duty imposed" (fol. 14, p. 6 and points *post*).

It was proved that these paintings were pictures painted by hand, and "their value depended on the skill of the particular "artist who painted them, and the porcelain ground on which "they were painted was only used to obtain a good surface on "which to paint, and was entirely obscured from view when "framed or set in any manner, and formed no material part of "the value of said paintings on porcelain, *and did not in itself* "*constitute an article of chinaware*, being manufactured sim-"ply as a ground for the paintings, and not for any use inde-"pendent of the paintings" (pp. 7 and 8).

Metallic colors were used, and the pictures were glazed, which takes the place of varnishing oil paintings (p. 8).

The defendants in error were art dealers. Similar paintings are painted on canvas and sold by the dozen.

The plaintiff in error proved by Davis Collamore, a retail dealer in porcelain and chinaware, that *chinaware* was frequently so highly ornamented that the ornamentation constituted nine-tenths of its value. He produced two plates with pictures upon them (p. 8), and Theodore Haviland testified that the processes by which paintings upon porcelain, and decorations upon chinaware were *made permanent* were similar (pp. 8, 9).

There being no question of fact in the case, the Court directed a verdict for the defendants in error, to which direction the plaintiff in error excepted (p. 9).

Point I.

The paintings in suit clearly come under the head of the following provision, viz.:

"PAINTINGS AND STATUARY NOT OTHERWISE PROVIDED FOR, "ten *per centum ad valorem*, but the term *statuary*, as used in

" the laws now in force, imposing duties on foreign importa-
" tions, shall be understood to include professional productions
" of a statuary, or of a sculptor only." (R. S. p. 473).

Before the insertion of the limitation, statuary was construed to cover everything in the form of statuary, even although metals were only run into spurious statuary moulds for the obvious and confessed purpose of evading the duties on the metals thus unaltered in quality or merchantable character.

This limitation as to statuary is therefore a legislative recognition of the established construction of the clause "paintings and statuary not otherwise provided for;" that (when unrestricted) it covered every possible variety, quality and form of paintings and statuary, except those particular forms that were specially designated and classified otherwise.

Now, Congress having deliberately left the term "*paintings*" unrestricted with this comprehensive construction expressly in view, there can be no further call or room for judicial interpretation in the abstract.

Point II.

Proved TO BE "PAINTINGS" AND NOT "CHINAWARE."

The plaintiffs below (defendants here) proved, without contradiction, that their exhibits were (fol. 18):

1st. "PAINTINGS ON PORCELAIN," and were "*pictures*
" painted *by hand*, and their value depended on the *skill of*
" *the particular artist* who painted them; and the porcelain
" *ground* on which they were painted was only used to ob-
" tain a good *surface* on which to paint, and was *entirely*
" *obscured* from view when framed and set in any manner,
" and formed no material part of the value of said *paint-*
" *ings* on porcelain, and"

2d. "Did *not* in itself constitute an *article of chinaware*,
" being manufactured simply as a *ground* for the paintings,
" and not for any use independent of the paintings."

(1) Here it was *established*, as matter of fact, that these *paintings did* come under the denomination of "*paintings;*" and, furthermore, "it was proved" * * * "that similar
" paintings were painted on canvass."

(2) It was established that the "*ground*" of the "*paintings*" never constituted an article of "*chinaware.*"

This proof is the legal equivalent of the statement that these paintings were not commercially "*chinaware.*"

According to numerous decisions this uncontradicted evidence is conclusive, both as including these *paintings* under the classification of "*paintings,*" and as excluding them from the classification of "*chinaware;*"—"*chinaware*" and "*porcelain-ware*" being synonymous. (See Webster, Worcester, McCullough's Commercial Dictionary, &c.)

Arthur vs. Lahey, 96 U. S., 112.
Arthur vs. Morrison, *Id.*, 108.

Worcester defines a painting to be a likeness or resemblance painted; something depicted, a picture. Wares—are goods, commodities, merchandise; such as hardware, tinware, earthenware.

Decorate—to adorn; to furnish. Neither Mr. Collamore, the retail dealer in china and porcelain-ware, nor Mr. Haviland suggested that these paintings in question were porcelain-ware; the reverse was so obviously the fact, that no witness could be obtained to contradict plaintiff's proof that they never came under the head of chinaware. Indeed, the Collector had hitherto classified them as paintings, paying a duty of but ten per cent., and it appears that some in these very invoices were so classified, the Collector attempting to make an arbitrary distinction without a difference, owing to some supposed variation in the artistic merit of the paintings (p. 8). There are paintings in oils, in water colors, in metalic colors, in distemper, in fresco, encaustic painting, enamel painting, panel painting and scene painting; also painting on thin sheets of wood and metal, which, when framed, are similar in appearance to oil paintings on canvas.

It might better be sought to bring those paintings under the heading of woodenware, tinware, manufactures of canvas, &c., than to bring the paintings in question under the heading of chinaware by judicial construction against uncontradicted evidence received without objection.

If this were law, then it would be necessary to take all the paintings of a picture gallery out of their frames to determine what "ware" they belonged to.

Point III.

THE COLLECTOR'S DEPENDENCE

here must be upon the irrelevant circumstance that *glazing* and *baking* here takes the place of varnishing in oil paintings, to fix the colors merely, and that those colors are metallic, as are also oil colors in part, such as chrome, white lead, gold, &c.

Artistic Merit.

The idea advanced below that the Collector could constitute himself an art critic and determine arbitrarily that the productions of certain artists were worthy of being denominated paintings, and of others not, or that the Collector could determine this by the invoice price without inspection, was so thoroughly disposed of below, that it will probably not be insisted on here.

It is utterly impossible to make any such distinction in fact or law. The attempt to draw a distinction between different sizes is equally futile. A little painting is as much a painting as a big one. If the fact that the little ones were sometimes used to decorate furniture were controlling, it would make them *furniture.*

Point IV.

THE "DECALCOMANIE" DECISION SETTLES THE PRINCIPLE.

The "*Decalcomanie*" decision by this Court is in principle conclusive in plaintiff's favor.

Arthur vs. Moller, 97 U. S. (7 Otto), 365, 367.

"The question involved in this case is whether certain arti-
" cles imported, known as *decalcomanie pictures*, are subject to
" duties as '*printed matter*,' or as '*manufactures of paper or of*
" '*which paper is a component material, not otherwise provided*
" '*for*' (12 Stat., 192; 13 *Id.*, 213; Rev. Stat., 2d ed., p. 474,
" § 2504, also, p. 469)." "The statutes impose the duties in the
" language following, viz.: On 'books, periodicals, pamphlets,

" ' blank-books, bound or unbound, and all printed matter, en-
" ' gravings, bound or unbound, illustrated books and papers
" ' and maps and charts, twenty-five per cent. *ad valorem.*'

" On ' paper, sized, &c., twenty-five per cent., &c. *Manu-*
" ' *factured of, or of which paper is a component material, not*
" ' *otherwise provided for, thirty-five per cent. ad valorem*' (*Id.*
" p. 479, § 2504)."

The Court say:

" We think the decision of the Court below was correct. In
" *Arthur vs. Rheims* (96 U. S., 143) it was held that the fact
" that artificial flowers were a manufacture of cotton did not
" determine that they were dutiable as cotton, but that they
" were properly taxable under the specific designation of ' *arti-*
" *ficial flowers.*'

" The same was held to be true of *india rubber goods* in
" *Arthur vs. Daviss* (*Id.*, 135), and of the steel forming a part
" of spectacles, in *Arthur vs. Susfeld* (*Id.*, 129). * * *

" Homan's ' Encyclopedia of Commerce ': ' Prints: impres-
" ' sions on paper or *some substance* of engravings on copper,
" ' steel, wood, stone, &c., representing some *particular subject*
" ' *or composition.* Prints, like *painting*, embrace every variety
" ' of subject, but differ *very widely* in the manner in which
" ' they are engraved.' Like other pictures, they are made and
" used for the purpose of ornament."

In *Arthur vs. Rheims* (96 U. S., 143–5):

"In 1874, Rheims, the plaintiff below, imported into the port of New York a quantity of artificial flowers."

He claimed that they were liable to 10 per cent. less duty as manufactures of the material composing them; the jury so found. This Court, in reversing the judgment, held:

" The general words of the Act of 1872," (levying the duty on manufactures of said materials) " are undoubtedly sufficiently
" comprehensive to embrace the case before us. Artificial
" flowers are a manufacture of which cotton is the chief com-
" ponent, and were that all, would be entitled to the deduction
" asked for.

" But it is true, also, that they are dutiable under the Law
" of 1864, not as a manufacture of cotton, but specifically, *eo*
" *nomine*, as *artificial flowers.*

" It has been held in many cases as that of *'almonds and dried*

"*fruits*,' the '*canary birds*,' and at the present term in the case "of '*thread-laces*,' and of '*chocolate*,' that when an article is "intended to be made dutiable by its specific designation it will "*not* be affected by the *general* words of the same or another "statute which would otherwise embrace it.

"This rule applies both to statutes *reducing* and to statutes "*increasing* duties. Giving it such application here we must "hold that '*artificial flowers*' are not entitled to be classed as "a manufacture of cotton;" and likewise, that paintings on porcelain are not manufactures of porcelain or porcelain-ware.

Point V.

The Rule of Construction.

"When an article is intended to be made dutiable by its "*specific designation* it will *not* be affected by the *general* "words of the same or another statute which would *otherwise* "*embrace it.* This rule applies both to statutes *reducing* and to "statutes *increasing* duties."

This rule laid down in *Arthur vs. Rheim*, (*supra*) suggests a very conclusive test for the present case when it declares that it works equally, whether the article, by its specific designation, is subject to a higher or lower duty than as a general manufacture of its material; *e. g.:*

Suppose rates of duties were reversed thus—

Paintings not otherwise provided for, 50 per cent.
Porcelain-ware..... 10 " "

No one would be so bold as to contend that paintings were liable to a deduction of 40 per cent. because they were painted on a porcelain ground, used only to furnish a surface, and entirely obscured by the painting and the frame.

In *Arthur vs. Lahey* (96 U. S., 112, 113, 118) the rule of construction is formulized in the beginning and emphatically repeated at the close of it, after a review of prior decisions, as follows:

"The judgment must be affirmed on the following "grounds: * * *

"2. When Congress has designated an article by its

"specific name, and imposed a duty upon it by such name, "general terms" [*even*] "in a *subsequent* act, or in a later "part of the same act, although sufficiently *broad* to *com-* "*prehend* such article, are *not applicable* to it."

"3. That the expresssion, '*not otherwise provided for*," "in the eighth section of the Act of 1864, does not deprive "these rules of their ordinary application."

N.B.—The word *even* is interpolated *supra*, in conformity with the formula in the later case of *Arthur vs. Rheims* (*supra*).

Point VI.

SUFFICIENCY OF PROTEST.

The only protest questioned was sufficient under the following latest decision:

Arthur vs. Dodge, 101 U. S., 34, 37.

Held: "An objection is made to the sufficiency of the "protest, the claim is that it was not so distinct and specific "as to apprise the Collector of the nature of the objection "made to the duty imposed. 'Technical precision,' says "Mr. Justice Clifford, for the Court in *Daviss vs. Arthur* "(96 U. S., 148, 151), is not required; but the objection "'must be so distinct and specific as, when fairly con- "'strued, to show that *the objection taken at the trial* was, "'*at the time*, in the mind of the importer, and that it was "'sufficient to notify the Collector of its true *nature* and "'*character*, to the end that he might ascertain the precise "'facts and have an opportunity to correct the mistake "'and cure the defect.' We have no difficulty in reaching "the conclusion that the protest in this case fully meets "the requirements of this rule. No one could have any "doubt of the *nature* and *character* of the *claim* that was "made."

Point VII.

JUDGMENT.

Judgment should be affirmed, with costs.

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